

MEDICAL CONTESTED CASE HEARING NO. 14044

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to an arthroscopy medial meniscectomy of the left knee for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On February 12, 2014, Carol A. Fougerat, a Division Hearing Officer, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to an arthroscopy medial meniscectomy of the left knee for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by EM, ombudsman.

Respondent/Carrier appeared and was represented by CF, attorney.

DISCUSSION

Claimant sustained a compensable injury to his left shoulder, left ankle and left knee on F as a result of a slip and fall. An MRI of the left knee revealed a horizontal tear of the posterior horn of the medial meniscus. Claimant's treating doctor has recommended an arthroscopy medial meniscectomy of the left knee. The request was denied by the Carrier and subsequently referred to an IRO. The IRO reviewer, identified as a board-certified general surgeon, upheld the Carrier's denial. The IRO reviewer noted that an arthroscopic meniscectomy would be indicated provided the patient meets specific criteria to include significant clinical findings noted by exam and that the patient has completed all conservative treatments. The IRO reviewer stated that there was mention in the clinical notes regarding an evaluation for physical therapy but that it was unclear if Claimant had completed a full course of treatment. The IRO reviewer also noted that there was no information submitted regarding Claimant's specific complaints of the knee giving way, locking, clicking, popping or any ongoing swelling. The IRO reviewer concluded by stating that the requested procedure was not recommended as medically necessary.

Texas Labor Code Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Health care reasonably required is further defined in Texas Labor Code Section 401.011

(22a) as health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts and treatment and practice guidelines. The Commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused, and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the ODG. Also, in accordance with Division Rule 133.308(s), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

ODG Indications for Surgery™ -- Meniscectomy:

Criteria for meniscectomy or meniscus repair (Suggest 2 symptoms and 2 signs to avoid scopes with lower yield, e.g. pain without other symptoms, posterior joint line tenderness that could just signify arthritis, MRI with degenerative tear that is often false positive). Physiologically younger and more active patients with traumatic injuries and mechanical symptoms (locking, blocking, catching, etc.) should undergo arthroscopy without PT.

- (1) **Conservative Care:** (Not required for locked/blocked knee.)
Exercise/Physical therapy (supervised PT and/or home rehab exercises, if compliance is adequate). AND (Medication. OR Activity modification [eg, crutches and/or immobilizer].) PLUS
- (2) **Subjective Clinical Findings (at least two):** Joint pain. OR Swelling. OR Feeling of give way. OR Locking, clicking, or popping. PLUS

- (3) **Objective Clinical Findings (at least two):** Positive McMurray's sign. OR Joint line tenderness. OR Effusion. OR Limited range of motion. OR Locking, clicking, or popping. OR Crepitus. PLUS
- (4) **Imaging Clinical Findings:** (Not required for locked/blocked knee.) Meniscal tear on MRI (order MRI only after above criteria are met). (Washington, 2003)

For average hospital LOS if criteria are met, see Hospital length of stay (LOS).

Claimant testified that he experiences locking in his left knee that causes him to lose balance and fall. Claimant also testified that he has swelling in his left knee; however, these symptoms were not documented in the medical records that were reviewed by the IRO or the URA's. Claimant's treating doctor, Dr. D, orthopedic surgeon, noted in a letter dated December 16, 2013 that Claimant has undergone physical therapy and taken "PO pain therapy" with little to no relief. Dr. D stated that he still recommends an arthroscopic medial meniscectomy. The ODG lists four indications for meniscectomy surgery and, although Claimant meets some of the criteria, the medical records fail to adequately address the conservative care and subjective clinical findings that are required. Although Claimant testified that he experiences locking and swelling in his left knee, the medical records fail to document these findings on examination and Dr. D did not explain how Claimant meets the ODG criteria for the recommended surgery. Claimant did not offer any other evidence-based medical opinion to support the proposed procedure.

Based on the evidence presented, the Claimant does not meet the criteria set out in the ODG for a left knee arthroscopic medial meniscectomy and the Claimant failed to provide an evidence-based medical opinion contrary to the determination of the IRO. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to an arthroscopy medial meniscectomy of the left knee for treatment of the compensable injury of (Date of Injury).

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

FINDINGS OF FACT

1. The parties stipulated to the following facts:
 - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - C. Claimant sustained a compensable injury on (Date of Injury).

- D. The IRO determined that the proposed arthroscopy medial meniscectomy of the left knee is not medically necessary for the compensable injury of (Date of Injury).
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
 3. Claimant does not meet the requirements of the ODG for an arthroscopy medial meniscectomy of the left knee and he failed to present other evidence-based medicine supporting the necessity for this procedure.
 4. An arthroscopy medial meniscectomy of the left knee is not health care reasonably required for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that an arthroscopy medial meniscectomy of the left knee is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to an arthroscopy medial meniscectomy of the left knee for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TX 78701-3232**

Signed this 12th day of February, 2014.

Carol A. Fougerat
Hearing Officer